

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's Rules)	CC Docket No. 94-102
to Ensure Compatibility with Enhanced 911)	
Emergency Calling Systems)	

**Request for Temporary Waiver of
Section 20.18(c) of the Commission's Rules**

Dobson Cellular Systems, Inc. ("Dobson"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Commission's Rules,¹ hereby submits this Request for Temporary Waiver of Section 20.18(c) of the Commission's Rules (the "Dobson Request"). Dobson is preparing to consummate a transaction (the "Assignment") pursuant to which it will acquire 16 Personal Communications Service ("PCS") licenses and related network assets from NOW Licenses, LLC ("NOW").² NOW's PCS system presently does not comply with the requirements of Section 20.18(c) of the Commission's Rules, and is the subject of a pending Request for Temporary Waiver of the TTY compliance deadline filed by NOW seeking an extension of the compliance deadline until June 30, 2004 (the "NOW Request").³ Upon consummation of the Assignment, Dobson intends to undertake a substantial upgrade of the PCS network in

¹ 47 C.F.R. §§ 1.3, 1.925.

² See ULS File No. 0001555982 (the "Assignment Application"), granted Apr. 30, 2004.

³ See Request of NOW Licenses, LLC for a Temporary Waiver of Section 20.18(c) of the Commission's Rules, filed June 25, 2002 in CC Docket 94-102.

order to achieve TTY compliance. Dobson's plan contemplates the construction and installation of a new switch, and related upgrades to almost 400 transmitter sites. Consequently, in order to fully implement its compliance plan, Dobson hereby seeks a temporary waiver of the TTY compliance deadline until Dec. 31, 2004.

I. Background

The NOW Request submitted in 2002 explained that compliance with the Commission's TTY rules would require NOW to upgrade its switch, base stations, and Operational Maintenance and Control Center.⁴ Based upon advice it received from Nortel at the time, NOW informed the Commission that an upgrade of switch software to version GSM13 was necessary, and that the company was undertaking such upgrade so that it could achieve compliance with both the TTY and CALEA rules by June 30, 2004.⁵ NOW explained that the length of time required to accomplish this switch upgrade was based, in part, on its inability to secure quotes or commitments from Nortel and other vendors due to NOW's small size and lack of market power, as well as a lack of available capital resources to complete the necessary upgrades within a shorter timeframe.⁶ Based upon those factors, NOW sought a two-year extension of the compliance deadline until June 30, 2004.⁷ Shortly after NOW filed the NOW Request, the Commission released an

⁴ NOW Request at 2.

⁵ *Id.* at 3.

⁶ *Id.* at 5-6.

⁷ *Id.* at 6.

order granting similar requests filed by several other carriers prior to NOW's filing.⁸ The NOW Request, and the requests filed by several other carriers, remain pending before the Commission.

Recent developments resulted in a dramatic change of circumstances for NOW since it filed the NOW Request. NOW executed an Asset Purchase Agreement with Dobson which contemplates that, subject to FCC consent, NOW will assign all of its FCC licenses to Dobson. In connection with that transaction, Dobson also will purchase many of NOW's network assets, including numerous base station facilities and related PCS equipment. While Dobson will purchase NOW's switch, Dobson does not intend to use that switch to operate the PCS systems beyond a short transition after closing. Instead, Dobson will construct and install a new switch. Dobson anticipates that it will consummate the Assignment in mid-June, 2004. In view of this timing, any additional upgrades to its switch that NOW would have undertaken in order to achieve TTY compliance in connection with its current extension request through June 30, 2004 would have had little relevance, since NOW's switch will be replaced by Dobson's more advanced switch almost concurrently.

Dobson also understands that NOW only recently learned that a far more substantial upgrade to NOW's switch is necessary for TTY compliance than NOW first anticipated. Specifically, NOW has advised Dobson that the GSM13 version of software to which NOW had intended to upgrade had been superseded by GSM15 software, and

⁸ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-120, *Order*, 17 FCC Rcd 12,084 (Chief, Wireless Telecom. Bur. 2002).

that this additional upgrade would cost NOW over \$1,000,000. NOW further advised Dobson that it did not have the resources necessary to make this additional capital investment.

Due to the foregoing recent developments, NOW's PCS systems are not, and will not be at closing, compliant with the FCC's TTY rules. Dobson intends to act quickly upon closing to initiate its compliance plan. But Dobson will need time to implement that plan. Dobson therefore respectfully requests an extension of the TTY rules to December 31, 2004. Dobson respectfully submits that an extension of the TTY rules is appropriate under Sections 1.3 and 1.925 of the Commission's Rules,⁹ as demonstrated below.

II. Waiver is Justified Under Sections 1.3 and 1.925 of the Commission's Rules

Section 1.3 provides that Commission rules may be suspended or waived "for good cause shown."¹⁰ Dobson respectfully submits that good cause exists to grant this temporary waiver. Dobson has a detailed plan to achieve TTY compliance, which involves the construction, installation and testing of a new switch that will be capable of full compliance with important Commission mandates including TTY, CALEA and LNP. In order to make the systems fully compliant, Dobson also must upgrade each of the approximately 400 antenna sites associated with the systems. Dobson anticipates that it will have the switch integrated into the network, tested, and fully TTY compliant by December 31, 2004. During this time, Dobson will be integrating the necessary features

⁹ 47 C.F.R. §§ 1.3, 1.925.

¹⁰ 47 C.F.R. § 1.3.

into the system's cell sites, so that many areas of the system will be TTY compliant much earlier than seven months from closing.

In the absence of action in addition to that on NOW's Request (which seeks an extension until June 30, 2004), it is possible that NOW's requested extension period will expire on the eve of closing. This would not provide Dobson with any opportunity to complete installation and testing of its switch, or to implement its TTY compliance plan. Since Dobson has a compliance plan in place, with specific timeframes targeted for compliance, good cause exists to provide Dobson with some flexibility to implement that plan.

Waiver also is appropriate under Section 1.925, which provides that the Commission may grant a waiver if it is shown that the "underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest."¹¹ The purpose of the TTY rules is to require carriers to achieve compatibility between TTY devices and digital wireless phones as quickly as possible and to cause wireless carriers to identify TTY compatibility as a priority. As described in the NOW Request, NOW did take steps to develop a plan of compliance with the TTY rules, and was progressing toward such compliance. As noted above, Dobson's compliance plan contemplates that the new switch will be installed and operational and the system compliant as a whole by December 31, 2004, with much of the system achieving compliance much sooner. Thus,

¹¹ 47 C.F.R. § 1.925.

the underlying purpose of the TTY rules – the provision of 911 service to TTY device users – continues to be the primary focus.

Finally, Dobson respectfully submits that an extension of the TTY compliance deadline would serve the public interest. A grant of the Dobson Request will enable the parties to consummate the Assignment, which will introduce into several of the subject markets a strong competitor, with a large regional footprint and next-generation network components that will provide service in compliance with significant FCC mandates such as the TTY rules.

III. Conclusion

Based upon the foregoing, Dobson respectfully requests an extension of the TTY compliance deadline through December 31, 2004.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

By: 

Lawrence J. Movshin


May 18, 2004

Declaration of Thomas A. Coates

I, Thomas A. Coates, do hereby declare under penalty of perjury that:

- 1 I am Vice President, Corporate Development, for Dobson Cellular Systems, Inc.
- 2 I have read the foregoing "Request for Temporary Waiver of Section 20.18(c) of the Commission's Rules."
- 3 I have personal knowledge of the facts set forth therein.
- 4 Except with respect to those facts of which judicial notice may be taken, those facts are true and correct to the best of my knowledge, information, and belief.

Executed this 18th day of May, 2004.


Thomas A. Coates